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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/918,537	08/01/2001	Yoshimi Nakagawa	520.40407X00	3830

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EXAMINER

HAILE, FEBEN

ART UNIT	PAPER NUMBER
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2663

DATE MAILED: 02/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/918,537

Applicant(s)

NAKAGAWA ET AL.

Examiner

Feben M Haile

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 August 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Information Disclosure Statement

1. Enclosed with the patent application are two non-patent literature references and one foreign reference. For these references to be taken into consideration, forms PTO-1449 or PTO/SB/08 need to be filed.

Claim Objections

2. Claims 1-3 are objected to because of the following informalities:

Regarding claim 1, on line 9 the words "being able to" should be deleted and the word "change" should be altered to -changing-.

Regarding claim 2, on line 8 the words "being able to" should be deleted and the word "change" should be altered to -changing-.

Regarding claim 3, on lines 8 & 12 the words "being able to" should be deleted and the word "select" should be altered to -selecting-.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear what is meant by the limitation "being able to select a suitable method" when claim 3, as a whole, is a method.

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4. Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear whether this claim is an apparatus or method because there are functions stated without any elements or steps.

Claim Rejections - 35 USC § 102

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1 & 3-4 are rejected under 35 U.S.C. 102(b) as being unpatentable over Ma et al. (US 5,953,338), hereinafter referred to as Ma.

Regarding claim 1, Ma discloses a method comprising: having means provided to at least one cross-connecting device (figure 3 and column 9 lines 5-8; this ATM switch combines multiple traffic types and transmits them on a single line), for monitoring path size and determining receiving path size (figure 1A unit 145 and column 7 lines 20-26; the call admission/control usage monitor module determines traffic loads of incoming data); and being able to change the size of a receive/transmit path automatically according to an input path size under control by the means (figure 1A unit 150, figure 5A, and column 7 lines 26-29; the bandwidth manager adjusts the size of a virtual path based on traffic load conditions from the call admission/control usage monitor module).

Regarding claim 3, Ma discloses a method comprising: when a path is set for a cross connecting device (figure 3 and column 9 lines 5-8; this ATM switch combines multiple traffic types and transmits them on a single line), specifying the size of the path

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by a user (column 7 lines 39-47; it is implicit that a user requests bandwidth via the ATM service contract agreements); being able to select either one of a mode of fixedly keeping the path size specified by the user or a mode of monitoring path size and automatically changing the size of a receive/transmit path according to an input path size (figure 1A unit 145 and column 7 lines 20-26; the call admission/control usage monitor module determines traffic loads of incoming data; figure 1A unit 150, figure 5A, and column 7 lines 26-29 & 39-47; according to service contract agreements, the bandwidth manager can adjust the size of a virtual path based on traffic load conditions from the call admission/control usage monitor module or it can keep the path size constant); being able to select a suitable method depending upon a service type by the user (figure 6 and column 7 lines 39-47; the ATM service contract agreements are determined by the different traffic types, i.e. CBR, VBR, etc..., hence the traffic type will determine the mode of bandwidth selection).

Regarding claim 4, Ma discloses a monitoring system comprising: means for monitoring path size and determining the size of a receive path (figure 1A unit 145 and column 7 lines 20-26; the call admission/control usage monitor module determines traffic loads of incoming data); and a function for automatically changing the size of a receive/transmit path according to input path size under control by the means (figure 1A unit 150, figure 5A, and column 7 lines 26-29; the bandwidth manager adjusts the size of a virtual path based on traffic load conditions from the call admission/control usage monitor module).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ma et al. (US 5,953,338), hereinafter referred to as Ma, in view of Chiu et al. (US 6,744,767), hereinafter referred to as Chiu.

Regarding claim 2, Ma discloses a method comprising: having means provided to at least one cross-connecting device (figure 3 and column 9 lines 5-8; this ATM switch combines multiple traffic types and transmits them on a single line), for monitoring path size and determining receiving path size (figure 1A unit 145 and column 7 lines 20-26; the call admission/control usage monitor module determines traffic loads of incoming data); being able to change the size of a receive/transmit path automatically according to an input path size under control by the means (figure 1A unit 150, figure 5A, and column 7 lines 26-29; the bandwidth manager adjusts the size of a virtual path based on traffic load conditions from the call admission/control usage monitor module).

Ma fails to teach the limitation: in case that the input path size exceeds a band, issuing an over path size alert and informing the occurrence of a path fault.

Chiu discloses a bandwidth broker that monitors the virtual line bandwidth on a link and sets warning flags for those links when the virtual line bandwidth exceeds a pre-specified bandwidth (column 15 lines 24-28).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Ma to incorporate the bandwidth broker taught by Chiu. The motivation being to enhance the reliability of data transmissions by adopting an alert system that minimizes data loss.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

a) Schmidt et al. (US 6,205,154), Automatic Path Selection for Fiber-Optic Transmission Networks

b) Pattabhiraman et al. (US 2002/0059408), Dynamic Traffic Management on a Shared Medium


c) Romana et al. (US 6,785,285), Method and System for Providing Broadcast Channels Over an Emulated Subnetwork

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Feben M Haile whose telephone number is (571) 272-3072. The examiner can normally be reached on 6:00am - 3:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky Ngo can be reached on (571) 272-3139. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



RICKY NGO
PRIMARY EXAMINER

2/22/05